



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

RIN 1625-AA09

[Docket No. USCG-2013-0197]

Drawbridge Operation Regulations; North Carolina Cut,
Atlantic Intracoastal Waterway (AIWW), Wrightsville Beach,
NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the operating schedule that governs the operation of the S.R. 74 Bridge, at AIWW mile 283.1, over the North Carolina Cut, at Wrightsville Beach, NC. This rule restricts the operation of the draw span to facilitate the additional unforeseen structural repair of the bridge. This change allows the bridge to open on a two hour advance notification at night so the necessary repairs may be made while still providing reasonable needs of navigation.

DATES: This rule is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 7 a.m. on March 1, 2014, and has been enforced with actual notice since 7 p.m. on April 16, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0197. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Mr. Jim Rousseau, Bridge Management Specialist, Coast Guard, telephone (757) 398-6422, e-mail James.L.Rousseau2@uscg.mil. If you have questions on reviewing the docket, call Barbara Hairston, Program Manager, Docket Operations, (202)366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Regulatory History and Information

The Coast Guard published a temporary deviation (77 FR

64411) on October 22, 2012, which allowed the bridge to operate under a restricted schedule until March 15, 2013, so structural repairs could be made to the bridge. The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not learn of the severity of the bridge damage and necessity of the repairs until after the previous deviation period ended. The repairs that are the subject of this regulation need to be undertaken as soon as possible to ensure safe use of the bridge.

On March 22, 2013, the Coast Guard received a letter from the bridge owner identifying additional structural problems with the bridge that would require work to continue under an altered bridge operating schedule. After coordination with the bridge owner and contractor, the Coast Guard established a maintenance schedule. The necessary

repairs are more extensive and will require a longer alteration period from the bridge schedule. As of the effective date, emergency work will be ongoing at the bridge in accordance with the schedule set forth in this document. Forgoing notice and comment will minimize disruption to the work already underway, provide for the reasonable needs of navigation, and allow for an efficient course of repairs in order to eventually return this bridge to its regular operating schedule, and thus, any delay is impracticable.

Under 5 U.S.C. 553(d)(3), for the same reasons as discussed above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

B. Basis and Purpose

The North Carolina Department of Transportation, which owns and operates this bascule lift bridge, has requested a temporary change to the existing operating regulations set out in 33 CFR 117.821 (a)(4), to facilitate the additional emergency structural repair of the bridge. The current operating schedule opens on the hour from 7 a.m. to 7 p.m. and on demand during the rest of the day.

The S.R. 74 Bridge, at AIWW mile 283.1, over the North Carolina Cut, at Wrightsville Beach, NC has unlimited vertical clearances in the open position and closed position of 20 feet above mean high water respectively.

The Coast Guard initially published a temporary deviation (77 FR 64411) on October 22, 2012, which allowed the bridge to operate under a restricted schedule until March 15, 2013, to accommodate for repair. However, the repairs are more extensive than initially contemplated and were not discovered until the end of the project. A contract extension was granted and a formal request to continue work by letter was received on March 22, 2013. Therefore, in order to facilitate the required additional repair work and to minimize the impact on navigation, from April 16, 2013, to March 1, 2014, the bridge shall open providing 2-hour advance notice during the evening and early morning hours when impact to navigation will be the least. The temporary final rule is needed to complete extensive work on the bridge.

Vessel traffic along this part of the Atlantic Intracoastal Waterway consists of commercial and pleasure craft including sail boats, fishing boats, and tug and barge traffic that transit mainly during the daylight hours with the occasional recreational and commercial fishing vessel traffic at night. There are fewer openings at night for mariners, making it a more suitable time to restrict the operation of the drawbridge. There are no alternate routes for vessels transiting this section of the North Carolina

C. Discussion of Temporary Final Rule

Under this temporary final rule the Coast Guard is temporarily revising the operating regulations at 33 CFR 117.821 by suspending the current regulation listed at 33 CFR 117.821(a)(4) and adding the revised regulation at 33 CFR 117.821(a)(6). The regulation will now read that between 7 a.m. and 7 p.m., the draw need only open on the hour and from 7 p.m. to 7 a.m. need not open, except with a two hour advance notice. The remainder of 33 CFR 117.821 will remain unchanged. This temporary final rule is necessary because of additional problems discovered on the bridge.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This change is not

a significant regulatory action because it is expected to have minimal impact on mariners since the operating hours effected are during the evening and early morning when vessel traffic is at a minimum. The Coast Guard has carefully coordinated the restrictions with commercial and recreational waterway users.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect from 7 p.m. to 7 a.m. with two hour notification for opening when vessel traffic is low. Vessels that can safely transit under the bridge may do so at any time.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have

questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of

people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant

rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this

action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the change to the operating schedule for the Wrightsville Beach Bridge in order to accommodate necessary repair. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.821, from 7 a.m. on April 16, 2013, through 7 p.m. on March 1, 2014, suspend paragraph (a)(4) and add paragraph (a)(6) to read as follows:

§117.821 Atlantic Intracoastal Waterway, Albemarle Sound to
Sunset Beach.

(a) * * *

(6) S.R. 74 Bridge, mile 283.1 at Wrightsville Beach, NC, between 7 a.m. and 7 p.m., the draw need only open on the hour and from 7 p.m. to 7 a.m. need not open, except with a two hour advance notice; except that from 7 a.m. to 9 a.m. on the second Saturday of July of every year, from 7 a.m. to 11 a.m. on the third and fourth Saturday of September of every year, and from 7 a.m. to 10:30 a.m. on the last Saturday of October of every year or the first or second Saturday of November of every year, the draw need not open for vessels due to annual races.

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Dated: April 4, 2013

STEVEN H. RATTI
Rear Admiral, U.S. Coast Guard
Commander, Fifth Coast Guard District

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